

***United States Court of Appeals
for the Second Circuit***



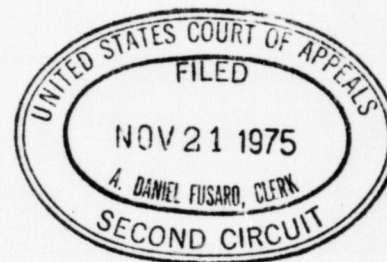
**APPELLANT'S
APPENDIX**

75-1355

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
:
UNITED STATES OF AMERICA, :
:
-against- : DOCKET NO. 75-1355
:
HERBERT I. FASS :
:
Defendant-Appellant. :
:
-----X

APPELLANT'S APPENDIX



HOWARD L. JACOBS
Attorney for Appellant
401 Broadway
New York, N.Y. 10013
431-3710

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

Information	1A
Docket Entries	2A
Court's Charge	4A
Photograph of Mural	23A
Photograph of Appellant with Mural and Painting he offered to Post Office	24A
Appellant's letter to various Governmental Officials - April 25, 1973	25A
Appellant's letter to Nyack Postmaster - June 1, 1973	26A
Letter from Congressman Benjamin J. Gilman to Appellant - June 5, 1973	27A
Letter from Assistant Postmaster General to Appellant - June 22, 1973	29A
Letter from Appellant to the Postmaster General of the United States - June 23, 1973	30A
Letter from Appellant to Congressman Benjamin J. Gilman - August 2, 1973	31A
Letter from Appellant to Dr. Henry Kissinger - January 18, 1974	32A
Letter from Appellant to Gorman Riley (sic) - December 21, 1974	33A
Appellant's Request to Charge	34A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

HERBERT I. PASS,

Defendant.

INFORMATION

75 Cr. 156

The United States Attorney charges:

On or about the 5th day of June, 1974, in the Southern District of New York, HERBERT I. PASS, the defendant, unlawfully, wilfully and knowingly did injure and commit a depredation against certain property of the United States, and of the United States Postal Service, an agency thereof, to wit, the glass window of a door in the basement of the United States Post Office at Nyack, New York, causing damage to the aforesaid property in an amount not exceeding \$100.

(Title 18, United States Code, Section 1361.)

COUNT II

The United States Attorney further charges:

On or about the 24th day of December, 1974, in the Southern District of New York, HERBERT I. PASS, the defendant, unlawfully, wilfully and knowingly did injure and commit a depredation against certain property of the United States and of the United States Postal Service, an agency thereof, to wit, a mural on the inside wall of the United States Post Office at Nyack, New York, causing damage to the aforesaid property in an amount not exceeding \$100.

(Title 18, United States Code, Section 1361).

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE KNAPP

2A
75 CRIM. 156

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		T. Gorman Reilly, AUSA.
HERBERT I. FASS		791-1949
		For Defendant:
		Arnold J. Ross, Esq.
		10 East 40th St.
		New York, N.Y. 10011

(12) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation ✓	Docket fee				
Title 18					
Sec. 1361					
Misdemeanor: Destruction of Govt. property.					
(Two Counts)					

DATE	PROCEEDINGS
2-13-75	Filed information.
2-24-75	Deft. present (Atty. present) enters a plea of not guilty. 10 days for motions. Deft. released on his own recognizance. Lasker, J. Case assigned to Knapp, J. for all purposes.
02-27-75	Filed Govt.'s notice of readiness for trial.
03-24-75	Filed Consent Order that Dr. Gursten Goldin, M.D. 166 East 63rd St. New York, N.Y. a psychiatrist be employed to make such observation & examination of deft. to determine deft's mental capacity to understand charges against him. The reasonable costs of Dr. Goldin's services not to (\$150) dollars. So ordered. Pollack, J. (Re paid pursuant to the Criminal Justice Act.)
07-28-75	Deft. (atty. present) trial begun before Judge Knapp.
07-29-75	Trial cont'd. and concluded. Jury returns with a verdict of not guilty on count 1 and guilty on count 2. P.S.I. ordered. Sentence adj. to 10-2-75 at 9:30. Deft. cont'd. R.O.R. Knapp, J.

3A

DATE	PROCEEDINGS
9-24-75	Filed transcript of record of proceedings, dated July 28, 29, 1975.
10-03-75	Filed deft. Herbert Fass's notice of appeal from judgment of 10-3-75. copies mailed to U.S. Atty., defts.'s atty. Howard L. Jacobs, & deft.
10-03-75	Filed JUDGMENT (atty. present) 30 days imprisonment. Deft. cont.'d. released on own recognizance pending appeal. Knapp, J. issued all copies,
10-06-75	Filed transcript of record of proceedings, dated 10-03-75.
10-28-75	Filed CJA 20 appointment of counsel, Howard L. Jacobs, P.C. 401 Bway, N.Y.C. 10013 tele: 431-3710. Knapp, J. issued all copies.
10-28-75	Filed CJA 20 approval for payment of counsel, H. Jacobs. Knapp, J. issued all copies.
10-24-75	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.

4A

1 mda

2 THE CLERK: The court is about to
3 charge the jury. Any spectator wishing to leave
4 the courtroom will do so now or remain seated until the
5 charge is completed.

6 CHARGE OF THE COURT

7 (Knapp, J.)

8 THE COURT: Ladies and gentlemen, as
9 I said, now is the time when I exercise my function and
10 tell you what the law applicable to the case is.

11 There are a few preliminary matters. In
12 the first place, this case has been brought here by an
13 information, an information signed by the United States
14 attorney, and which sets forth the charge against the
15 defendant.

16 That information is no evidence whatever.
17 It doesn't indicate anything except that it is a
18 charge that is brought here before and you and it is up to you
19 to decide whether the charge has been sustained or not.

20 The second thing I want to remind you
21 that my function is to tell you the law, your function of is
22 is to decide what the facts are, and you are not to
23 be concerned in any way, shape or form with what I may
24 think the facts are. I told you it would be just
25 as silly to ask you half way through how I should

5A

1 mda

2 charge the rest of the law. I do my job, you do your
3 job, and the whole theory of the administration of
4 justice is the division of responsibility between differ-
5 ent persons.

6 The United States attorney has the respon-
7 sibility of presenting the government's case to you.
8 The defense attorney has the responsibility of pre-
9 senting the defendant's version of the case, the de-
10 fendant's position, to you. It is my responsibility
11 to define the law. You have the responsibility of
12 following the law as I define it in deciding what the
13 facts are. Each of us should confine ourselves to
14 our own sphere of responsibility. In that way justice
15 will be done.

16 While on the question of responsibility there
17 is another matter that is my responsibility
18 and not yours, and that is what, if any, punishment should
19 be imposed upon this defendant if your verdict makes
20 that appropriate for me to decide. I must trust you
21 to deal with the facts, and you must trust me properly
22 to exercise any responsibility your verdict may impose
23 upon me.

24 That, again, as I said, is part of the
25 division of responsibility which the law recognizes.

6A

1 mda

2 This is an unusual case in that practically
3 no facts are in dispute. The only fact that I
4 can remember being disputed in the summation was Mr.
5 Weber's testimony as to how long it took the defendant
6 to put the obscenity on that piece of glass. To the
7 extent that you deem that dispute relevant, you should
8 of course consider Mr. Weber's testimony and weigh it
9 as you would anybody that ever talks to you in daily
10 life. That is what the jury is for. You heard
11 what he said. You weigh his credibility just as you
12 would every time somebody talks to you, they want you
13 to believe it, you decide whether or not you are
14 going to believe it, and that's it, and that's what you
15 do here.

16 Of course, you bear in mind he worked for
17 the government and might conceivably have an interest
18 in favor of the government, the same way the defendant
19 has an interest in favor of himself, and if you find
20 this fact relevant, bear Mr. Weber's interest in mind in
21 deciding whether it any colored his testimony.

22 The defendant is charged with wilfully
23 injurring or committing a depredation against property
24 of the United States. There are three aspects of
25 that charge:

7A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mda

First, that the defendant injured or damaged certain property;

Second, that he did so wilfully; and,

Third, that the property he injured or damaged was government property..

The third question isn't before you because the defendant has conceded for present purposes that this property is government property, so you don't have to concern yourself with that aspect of the case.

In the first place, you have to find did he injure or damage certain property? There is no dispute that he scratched this obscenity on the glass and that he burned this swastika on the mural. You are to determine whether that constitutes injury or damage.

I just point out that in injury or damage value is of no moment in this particular case. You don't have to figure the dollar value of the damage, but you do have to conclude it was substantial, not just a de minimis piece of damage. You have heard all the evidence on that, and I leave that question to you.

The crux of this case, however, is whether

8A

1 mda

2 he did so knowingly and wilfully as those terms are
3 used in the statute.

4 Now, what does knowingly and wilfully
5 mean as used in the statute?

6 Well, knowingly means he knew what he was
7 doing, and that's all that knowingly means: he
8 knew what he was doing. He did not think he was doing
9 something else. That really isn't much in dispute
10 in this case.

11 The key word, as far as you are concerned,
12 is that he wilfully did it. Now, as to wilfully, the pure
13 dictionary definition of wilfully might turn out to
14 be the same as knowingly, namely, did he intend to do
15 it. However, wilfully as used in a criminal statute
16 means something more. It implies evil intent in the
17 sense of intending to violate the law.

18 The first count charges that on the 5th of
19 June of last year he mutilated the glass panel. The
20 next count charges that the day before Christmas he burned
21 the picture.

22 Now, in deciding whether it is wilful you
23 must conclude beyond a reasonable doubt -- and every
24 decision you have to make in this case I leave to you
25 has to be beyond a reasonable doubt, and I will come

1 mda

2 to what that means later -- you have to conclude that
3 at the time he acted he knew that this conduct was unlawful
4 in the sense that he knew it would probably subject him
5 to arrest, if caught, and that he knew the conduct was
6 unlawful and that he nonetheless persisted in that un-
7 lawful conduct. That is what the wilfully means.
8 It doesn't mean just doing something intending to do
9 the act. That is part of it. But you also have
10 to find that he knew it was unlawful in the sense that
11 I have mentioned and despite that knowledge persisted
12 in his determination to do it.

13 That is what the government has to prove
14 beyond a reasonable doubt.

15 Now, what does it not have to prove? It
16 does not have to prove that he was aware of the particu-
17 lar statute that he was violating. He did not have
18 to know that there was this particular statute that I
19 referred to that makes it unlawful to violate govern-
20 ment property. He just had to know in general that
21 it was unlawful and that if he did it and got caught,
22 he was properly subject to arrest.

23 The government doesn't have to show the de-
24 fendant was a bad man. Whether he was a good man
25 or bad man is irrelevant. Whether he wrote elegant

1. mda

2 or inelegant prose is wholly irrelevant. The
3 government doesn't have to show that his ultimate
4 objective was antisocial. We are not here concerned
5 with the wisdom or unwisdom of that particular mural.
6 We are not here concerned with the issue of the morality
7 or immorality of the people who lived in the 17th Century
8 and what we should ~~now~~ be doing about it. That is
9 for other people to be concerned with. History is
10 history and how they are going to teach it is the
11 responsibility of appropriate government and private
12 agencies and is not our concern here.

13 Therefore whether you approve or you dis-
14 approve of the defendant's stated objectives is
15 wholly irrelevant to this case.

16 Why then did I permit all this testimony
17 over the government's objection about the letters he
18 wrote and about the letters he got back and so on and
19 so forth? Why did I permit it? Simply for this
20 reason. What you have to find is what the de-
21 fendant intended, what was in his mind, at the time he
22 acted.

23 There is no computer, nobody that can tell you
24 I saw him and his mind said so-and-so. What was in
25 his mind is for you to determine on all the evidence,

11A

mda

and I know of no way to arrogate to myself the determination of what you might think is relevant in finding what was in his mind. Therefore, the only way you can tell what is in anybody's mind is to see how he acts, what he does, and then conclude from that what was in his mind. That is the only way you know what is on anybody's mind. You do that every day in your life. You always have to decide what's in the other person's mind. Otherwise you don't know how to treat them. What they say isn't necessarily what they mean. That's life. But you know that. You don't make a fuss about it. You watch somebody saying or doing something and click, click, click, you decide in your own mind what they mean and act accordingly. You don't necessarily act on what they say but on the overall impression you get from their action.

I can just think of no way of arrogating to myself the privilege of saying what you might think relevant in determining what is in a particular person's mind at a particular time. Therefore, I let both sides put before you everything that he said or did at or about the time this act occurred. Nevertheless, although all those things are relevant, you must bear in mind that the question is, did he act with knowl-

12A

1 mda

2 edge that what he was doing was unlawful and with that
3 knowledge did he nonetheless pursue that course of
4 action?

5 I think I will just read to you what
6 another judge said on this subject in another case, be-
7 cause it seem so be apt here. He said:

8 "In this regard, you should be careful to
9 distinguish between intent and motive."

10 Motive in this sense is what his ultimate
11 objective may have been.

12 "The two should not be confused. Motive
13 is what prompts a person to act. Intent refers only
14 to the state of mind with which the act is done. Good
15 motive alone is never a defense where the act done is
16 a crime. One may not commit a crime and be excused
17 from criminal liability because he desired or expected
18 that ultimate good would result from his criminal
19 act. Moreover, if one commits a crime under the
20 belief, however sincere, that his conduct was religiously,
21 politically or morally required, that is no defense to
22 the commission of a crime."

23 That brings us back to the question of the
24 government's burden of proof. The government's
25 burden of proof is that they establish the defendant's

1 mda

2 guilt, in this case that the defendant wilfully
3 did these acts, which is the real crux of the problem
4 before you, beyond a reasonable doubt.

5 What does that mean? What does reason-
6 able doubt mean? The words really define themselves.

7 In a civil case, all plaintiff has to do
8 is establish his case by what is called a preponder-
9 ance of evidence, which boils down to that it is more
10 probable than not that the plaintiff's version of the
11 events are correct. If it is more probable the plaintiff
12 is correct than defendant, the jury should give its
13 verdict to the plaintiff. That is fine in a civil
14 case for all that is involved is whether A should pay
15 B some money.

16 The defense counsel adverted to the fact
17 the government could sue him for damages if it wanted
18 to. If the government should exercise that option
19 to sue him, the burden of proof would be was it more
20 probable than not that he did it, and that would be
21 the end of the case.

22 However, in a criminal case at least one
23 of the objectives of the government in bringing a
24 criminal case is to authorize the judge, and that is
25 me, to put the defendant in jail if he is convicted,

14A

mda

and our liberties would not be worth much if it was possible to convict a man because it was more probable than not that he was guilty. Therefore, the law says that the guilt must be established beyond a reasonable doubt.

There are two words in that definition, reasonable and doubt. The meaning of doubt is self-apparent. The word "reasonable" in the last analysis is equally self-definable. It means a doubt for which you can give a reason. It isn't just a fanciful doubt or a reason for ducking a disagreeable duty. Nobody likes to be in a position of convicting a fellow human being, but the law would also be in a sorry state if jurors were unwilling to convict a defendant where his guilt had been established beyond a reasonable doubt.

Also, the reasonable part of the term goes to the essence of jury deliberation. If one of you has a doubt and expresses a reason for it, and another juror has no doubt, the expression of the reason for your doubt would probably do one of two things: it would either permit you to convince your fellow jurors they should have doubt or permit them to convince you that you should not have a doubt. So it is by the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mda
expression of doubts or lack of them, and the reasons
for them or the lack of them, that the jury comes to
its conclusion as a body whether or not the defendant's
guilt has been established beyond a reasonable doubt.

Now, reasonable doubt, like everything
else in the case must be based on the evidence or the
lack of evidence, not on something you may have heard
on the outside or some impression that you may have
brought with you into the courtroom. It has to
be based on the evidence or lack of evidence. Other-
wise, how could you discuss it? All you have in common
is what you have heard here in this courtroom or seen
in this courtroom, and it is on the basis of your common
experience that you must base your verdict. That is
the essence of the jury system. You see, common
judgment on common experience.

Obviously, you cannot do that if you
base it on something that one of you may have heard on
the outside and that is not common to all of you,
which is what was heard in the evidence here.

In this connection I would like to point
out that while it is your duty to discuss your doubts
or lack of them with each other, and that you should
listen to each other's views, you should adhere to any

1 mda

2 conscientious opinion you might hold and not give it
3 up merely for the sake of unanimity. The law simply
4 requires you to do your best to convince your fellow
5 jurors of the correctness of your views, and at the
6 same time to listen with an open mind to theirs and
7 make a conscientious effort to reach a result which
8 conforms to the conscientious belief that each of you
9 holds.

10 Before I leave the question of reasonable
11 doubt, it being so important, let me read to you
12 what another definition given by a judge for whom I have
13 great respect is. "It is a doubt based on reason," he
14 said, "which arises from the evidence or lack of evidence
15 in the case." It is a doubt that appeals to your reason,
16 to your judgment, to your common understanding and your
17 common sense. It is a doubt which would cause you
18 to hesitate to act in matters of importance in your
19 daily lives, but it is not a caprice, whim or specula-
20 tion. It is not a doubt that a jury may conjure up
21 to avoid the performance of an unpleasant duty. It
22 is not sympathy for a defendant.

23 Let me repeat: It is a reasonable
24 doubt.

25 Now, that ends the quotation. As you

1 mda

2 see, it isn't too much different from what I said
3 originally, but I thought he said it rather well.

4 Now, closely related to the doctrine of reason-
5 able doubt is the concept of presumption of innocence.
6 That means the government has the burden of proof in
7 this case, and such burden never shifts. I told you
8 that the defendant doesn't have to prove anything.
9 The point is that the presumption of innocence con-
10 tinues in his favor throughout the entire trial and
11 remains there in the jury room until you have finally
12 resolved it, if you ever do, by a verdict of guilty.

13 It means this. Right up to the last minute
14 your discussion should include the proposition that the
15 government has this burden, and if the government has
16 not sustained this burden, that in itself can be the
17 basis for a reasonable doubt.

18 I must mention also there are two counts
19 in this indictment. Actually, you are trying two
20 cases together. You consider each count separately,
21 and you bring in your verdict as to each count
22 separately, and there is no reason in the world why they
23 should be the same verdict as to the two counts. You
24 consider separately the elements I have laid down to you
25 with relationship to the cut on the glass and the rela-

1 mda

2 tionship to the painting, and you bring in a separate
3 verdict on each count.

4 I think that I have given you the appro-
5 priate law. However, it is my custom at this time
6 to excuse the jury for a few minutes and let counsel
7 for either side made suggestions or corrections, maybe
8 I have left something out that they think I should bring
9 in, and obviously I don't do it in the presence of the
10 jury because no lawyer wants to say, "Judge, I think you
11 are wrong on such-and-such," and I say, "No, I think
12 I was right," because that only emphasizes what they
13 thought was wrong in the first place.

14 I will excuse you for a while now, but don't
15 start discussing the case because I might change some-
16 thing before you are to start your deliberations.

17 (The jury left the courtroom.)

18 THE COURT: Mr. Jacobs?

19 MR. JACOBS: One general charge I don't
20 believe your Honor told them is that the verdict
21 must be unanimous.

22 THE COURT: I always tell them that at
23 this point.

24 MR. JACOBS: I don't think I have any-
25 thing further, your Honor, except --

1 mda

2 THE COURT: You except to my failure to
3 charge that they can consider motive.

4 MR. JACOBS: That is all.

5 THE COURT: Mr. Reilly?

6 MR. REILLY: Nothing, your Honor.

7 THE COURT: I assume you agree that they
8 may have the exhibits.

9 MR. JACOBS: I do, your Honor.

10 THE COURT: I will tell the jury the
11 verdict has to be unanimous, and there is nothing else
12 you want them to be told, I assume.

13 All right. Ask them to come back.

14 One of the jurors has a question so we
15 are having the juror write the note out. If I think
16 it is necessary to call a side-bar conference, I will.
17 Otherwise I will read the question and answer it.

18 (Jury present.)

19 THE COURT: Juror No. 12 asked this
20 question:

21 "Please clarify what you said about the weight
22 to be accorded to the defendant's state of mind, i.e.,
23 what his motives were."

24 Well, motive as such is immaterial.
25 Let me read back what I read from the other judge, and

1 mda

2 then I will explain that:

3 "In this regard, you should be careful to
4 distinguish between intent and motive. The two should
5 not be confused. Motive is what prompts a person to
6 act. Intent refers only to the state of mind with
7 which the act is done."

8 In other words, intent in this case, and
9 it has to be wilful intent, means that he wilfully
10 intended to violate the law, that he wilfully intended
11 to do an unlawful act as I have described that word to
12 you.

13 "Good motive alone is never a defense where
14 the act done is a crime."

15 The act done in this situation has to be
16 wilfully intended to be a crime.

17 "One may not commit a crime and be excused
18 from criminal liability because he desired or expected
19 that ultimate good would result from his criminal
20 act."

21 I think that is enough of that quotation
22 to meet your question.

23 By way of housekeeping instructions,
24 your verdict has to be unanimous. There is no such
25 thing in the federal court as a nonunanimous verdict in

21A

1 mda
2 a criminal case. There is no verdict on either count
3 unless you are unanimous one way or the other.

4 You are entitled to any of the exhibits
5 you want. You can just ask for all the exhibits
6 or you can ask for them by description. If you ask
7 for them, they will be sent in to you.

8 Also, you are entitled to have any testimony
9 read back, if you want it, and you are entitled to have
10 any explanation from me that you may want.

11 Remember what I told you about hangups and
12 experts. One of the things that experts have a way
13 of doing is talking in specialized language. You
14 have heard doctors talking to each other. You can't under-
15 stand what the deuce they are talking about. Well,
16 lawyers get to do the same thing. I try not to do
17 it in my instructions to the jury but I can't overcome
18 the habit of a lifetime any more than anyone else can
19 and it may be I have said things which are perfectly
20 clear to me and my colleagues but are not clear to you
21 because you are not experts in this field.

22 If there is anything unclear, don't have
23 any hesitancy in asking me to explain it. Don't
24 be afraid that I will take offense. I won't. That's
25 my job, to make things clear to you, as I have tried

1 mda

2 to, but I can't always succeed. So you are entitled
3 to any testimony you want to have read, you are entitled
4 to any exhibits, you are entitled to any further
5 instructions you may wish. I now submit the case
6 to you with the complete confidence that you will do
7 justice between the United States of America and this
8 defendant.

9 (Marshals duly sworn.)

10 THE COURT: If you want anything, just
11 give the marshal a note and he will bring it out.

12 (The jury retired to commence its de-
13 liberations.

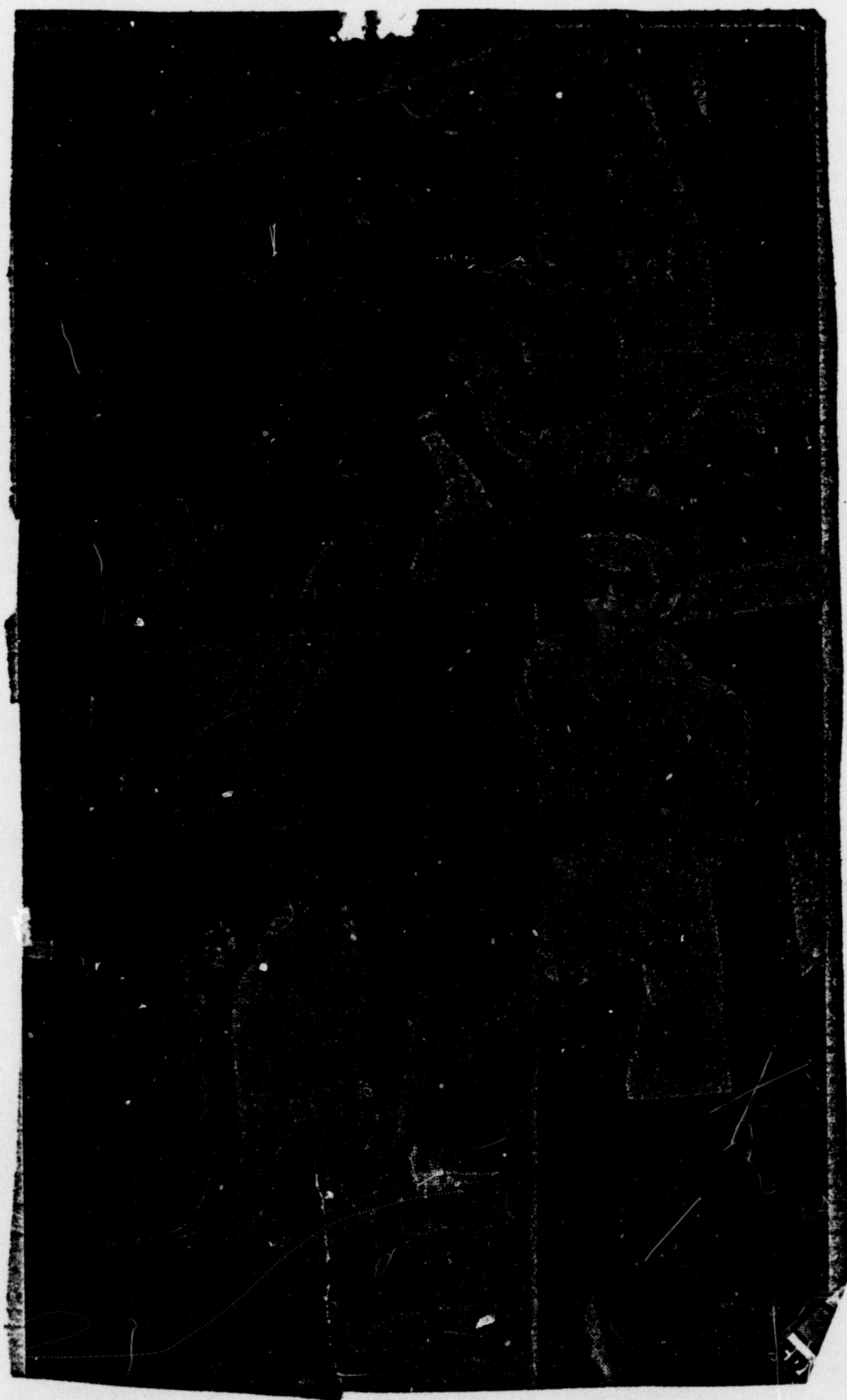
14 THE COURT: I think we will probably
15 wait for 10 or 15 minutes to see if there are any
16 immediate questions and then we will adjourn for lunch.

17 (Luncheon recess.)
18
19
20
21
22
23
24
25

23A

THE





Tiffany
patina

For a bronze color finish
on solder or pewter alloys.

914 - 358-~~8888~~ 9610



87 S. Broadway, Nyack, N.Y. 10960

25A
copper foil
ADHESIVE-BACKED

soft solder

flux

April 25, 1973

To: Mssrs: Jacob Javits, U.S. Senator, N.Y., James Buckley-U.S. Senator
Benjamin Gilmore. House of Representatives
Postmaster- Nyack Post Office, Nyack, N.Y.
John Dow, A man I admire

Gentlemen:

As a citizen of the United States, and a resident of Nyack, N.Y.
I am outraged and appalled at a mural hanging in the Nyack post office,
S. Broadway, Nyack which shows our much maligned but beautiful brothers,
the American Indians, savagely slaughtering white woman and children.

I implore you to use whatever influence you have to see that
this painting (painted in 1936) be removed from view.

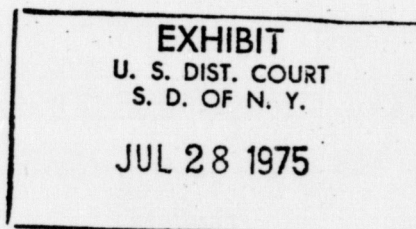
Very truly yours,

A handwritten signature in cursive script, appearing to read "Herbert Fass".

Herbert Fass

Enclosures: Photo of Mural and a Journal News Article showing that I
am a responsible, sincere citizen

DEFENDANT



A handwritten signature in cursive script, appearing to read "C. J. J.".

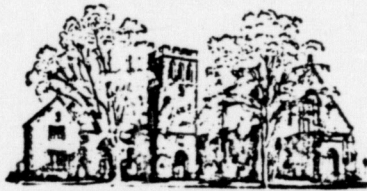
STAINED GLASS WORKS AND SUPPLIES
ANTIQUES IN STAINED GLASS BOUGHT AND SOLD
REPAIRS & SUPPLIES—RECONSTRUCTIONS & ORIGINAL WORKS OF ART

26A
DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

914-353-0188 (New York)



NYACK RESEARCH FOUNDATION

97 SOUTH BROADWAY
SOUTH NYACK, NEW YORK 10960

EXECUTIVE DIRECTOR

DIRECTORS

Dr. Peter Pershan, Ph.D
Dr. Sanford Hammer, Ph.D
Dr. Max Fishbach, M.D.
Dr. Francis O'Connor, Ph.D
Dr. Harvey Herman, Ph.D
Mr. Arnold Ross, LL.D
Mr. Alvin Gross, LL.D
Mr. Meyer Schwartz, Vice-President
Mr. Arnold Ehrman, CPA
Mr. Herbert Fass, B.S. Met E.
Dr. d. C. Husey, Trees

Did

6/1/73

DEAR MR WEBER,

ON Tues., JUNE 5 at
12 Noon, Mary Ann Red Cloud and
myself will pay the Nyack Post Office
a visit. We hope you will extend
her the same courtesy that you
were so kind to extend her.

Thank you
Herbert Fass
HERBERT FASS

BENJAMIN A. GILMAN
26TH DISTRICT, NEW YORK

COMMITTEE:
FOREIGN AFFAIRS

SUBCOMMITTEES:
FOREIGN ECONOMIC POLICY
NEAR EAST AND SOUTH ASIA

USMA BOARD OF VISITORS

WASHINGTON OFFICE:
1723 LONGWORTH BUILDING
TELEPHONE: (202) 225-3776

Visit Bureau of Indian Affairs

Congress of the United States

House of Representatives

Washington, D.C. 20515

27A

DISTRICT OFFICES:
24 ROBERTS STREET
MIDDLETOWN, NEW YORK 10940
TELEPHONE: (914) 343-6666

POST OFFICE BUILDING
217 LIBERTY STREET
NEWBURGH, NEW YORK 12550
TELEPHONE: (914) 565-6400

POST OFFICE BUILDING
48 SOUTH BROADWAY
NYACK, NEW YORK 10960
TELEPHONE: (914) 358-6688

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

June 5, 1973

Mr. Herbert Fass
97 south Broadway
Nyack, New York 10960

Dear Mr. Fass:

Thank you for your recent letter advising me of your disapproval of the mural on the wall of the Nyack Post Office.

I have scrutinized the mural since receiving your correspondence and have also contacted the United States Postal Service to ascertain the painting's historical perspective.

The Postal Service informs me that this mural was painted as a Works Progress Administration project in 1936. The W. P. A., as you may well know, was established by executive order under the authority of the Emergency Relief Appropriation Act of 1935 during Franklin Delano Roosevelt's first term as President. Apparently, a struggling and talented artist found much needed employment through this effort.

This work should be viewed as a work of art and its subject matter be viewed in its historical perspective. Admittedly, I have no knowledge of the artist's life or character. But I feel strongly that for us to make any judgement as to what prejudices the artist may have possessed would be unfair and presumptuous. It is conceivable that the artist possessed the same sensitivity and regret for the Indians' treatment as you and I possess today. On the other hand, if the painting serves to "malign", to use your words, "our beautiful brothers, the American Indians," we should be reminded of our Nation's shameful deeds toward these people.

It has been suggested that our area's children might be harmed by a view of this scene. Do we not have an obligation to confront our children with this nation's history; both where it has been proud and where we have acted with dishonor?

28A

Mr. Herbert Fass
June 5, 1973

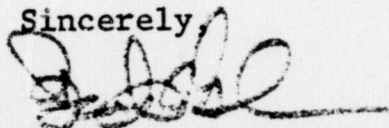
Page two

You may be interested to know that the Postal Service and the Department of the Interior, which today houses the Bureau of Indian Affairs, both have on their walls in Washington murals painted in the same era under the same program. Not only are other American Indian scenes depicted, but there also appear scenes of black slaves working in the fields, being hurried along by white traders. These scenes all depict times and events in our history, many of which thankfully have passed and hopefully will never return.

Rest assured I appreciate your deep, abiding concern and share your interest in our citizenry's objective view of the American Indian experience.

With best wishes,

Sincerely,



BENJAMIN A. GILMAN
Member of Congress

BAG:hmk

Senator
John
Sparkman
Senate
Banking
Committee



29A

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

OFFICE OF THE POSTMASTER GENERAL
Washington, D.C. 20260

June 22, 1973

Dear Mr. Fass:

This will acknowledge your June 18 letter to Postmaster General E. T. Klassen and provide comments on the three items to which you referred.

1. Nyack Post Office murals on the history of Rockland County are professionally considered to have both historical and artistic interest. They typify a variety of decoration widely commissioned for Government buildings during the depression era of the 1930's. The Postal Service views the murals in this context and has every reason to believe they are so viewed by the majority of Nyack citizens.
2. For a century, the Postal Service has handled postal cards sent through the mails without envelopes. Many stationery suppliers also provide writing paper that can be folded into an envelope form. However, the use of envelopes, in which correspondence can be sealed for privacy and security, offers obvious advantages to many postal customers.
3. Microfilm can now be sent through the mails in appropriate containers. In the event private enterprise ever develops substantial markets for microfilmed publications, you can be sure the Postal Service will be ready to deliver their product.

Sincerely,

Fred E. Batrus
Assistant Postmaster General
Executive Administration

Mr. Herbert Fass
c/o Nyack Research Foundation
97 South Broadway
South Nyack, New York 10960

Tiffany
patina

For a bronze color finish
on solder or pewter alloys.

914 - 358-6573



97 S. Broadway, Nyack, N.Y. 10960

30 A
copper foil
ADHESIVE-BACKED

soft solder

flux

June 23, 1973

Office of the Post Master General
Washington, D.C. 20260
Att: Fred E. Batrus
Assistant Post Master General
Executive Administration

Dear Mr. Batrus

I am in receipt of your letter to The Nyack Research Foundation of June 22, 1973 and am both shocked and appalled at your and the Post Office's lack of human sensitivity and good business sense.

Postmaster Klassen refused to discuss the mural and my constructive suggestions when I visited the Postmaster's Office last week, (article enclosed) and now your stupid letter.

I imagine that if constructive suggestions are viewed with such disregard then there would also be a similar disregard by Congress and the American people when the Postmaster asks for a rate increase and says that this increased rate will help make the postoffice more efficient. The American people are tired of listening to this ~~excuse~~ excuse every time you get your raise and then only a minimum amount of improvement is done. The same framework of thought which exists in the Post Office today as regards human dignity (Nyack Post office mural) and post office efficiency (eliminate the envelope through an advertising and public relations campaign and the encouragement of microfilming to save magazine and newspaper weight and to save trees) is indicative of why your rates keep going up but your efficiency keeps about the same or sometimes worse. If Mr. Klassen does not wish to entertain constructive criticism and discuss these issues personally then I think that a full investigation of the U.S. Postal System is called for.

I await your answer.

Sincerely yours,

Herbert Fass

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

G. J. A.

STAINED GLASS WORKS AND SUPPLIES
ANTIQUES IN STAINED GLASS BOUGHT AND SOLD
REPAIRS & SUPPLIES—RECONSTRUCTIONS & ORIGINAL WORKS OF ART

31A
DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

Hid

August 2, 1975

Mr. Benjamin A. Gilman
House of Representatives
Washington, D.C.

Dear Mr. Gilman :

Thank you for your letter of June 5 and also July 24 to Ms. Nancy Oppenheim. I still cannot understand your reluctance to see any other point of view other than a work of art is to be "obliterated", to quote you.

I only ask that if instead of Indians the painting depicted murdering Irishmen, Jews or Italians the whole community and I am sure yourself would be up in arms over the mural. To me and also to the several American Indians who have viewed the painting it is obscene and does not belong in a Federal Building which I must go to in the course of my business day. Why do you condone something offensive to Indians; is it because there aren't enough American Indians in your district to really bother about the matter. A racial slur is wrong...catagorically and undeniably. If one wants to show racial stereotypes then show them in an art gallery to an audience that can choose freely whether to go and see such paintings or not (their free choice.) A Post Office is a public place to conduct business and should be free of offensive art. I plan to meet shortly with Josephine Burke, Republican Committee Vice Chairman in my district. I plan to bring the matter of the mural up in our conversation. I think it could be publically embarrassing to continue your present view regarding the mural. I am also considering switching to the Republican Party if they can show me causes of common interest. I think it would be to our mutual advantage to meet and have you hear my views. I would like to see politics in a humane, logical, ethical pattern rather than its present opportunistic way.

Sincerely,

Herbert Pass

32A.

2053391C
DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

Iid

January 13, 1974

Dr. Henry Kissinger
Department of State
Washington, D.C.

Dear Dr. Kissinger:

I have been following your career and accomplishments in recent months and I honestly believe that your efforts are genuine regarding your quest for world peace and your love for your adopted country.

Enclosed is a few newspaper clippings about an Indian Savage mural which hangs in my Nyack, N.Y. post office. What a nice gesture to the rest of the world that you have helped in our own countries American Indian dilemma. Won't you help me in my efforts to show another, less devastating side of Indian life. I am sure that such a gesture on your part would increase your creditability even more. Please let me hear from you.

Sincerely,

ACE

1/20/74

DIRECTOR

AMERICAN REVOLUTION

EXHIBIT
TRUCK TRID 1.00
7.14.70 11.2

3081 23 JUL

3506

DEFENDANT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUL 28 1975

33A

Tiffany
patina

For a bronze color finish
on solder or pewter alloys.

914 - 358-8273 9610

FORMERLY



87 S. Broadway, Nyack, N.Y. 10960

copper foil
ADHESIVE-BACKED

soft solder

12/21/74

flux

MR. GORMAN KILEY
U.S. Attorney General's Office
Foley Square
New York, N.Y.

Hi Neighbor,

About two years ago, I started sending letters to Washington, Albany, New York City and god knows where else, in an effort to have that "funny Indian" mural removed from the walls of the Nyack post office. All my efforts with letters, personal contacts, demonstrations, fasts, etc.. have gone for nothing.

Are you all such fools!!! Can't you see that it is not the American way to throw American Indians out of their villages, homes and land and then, put up "funny" or "dirty" Indian pictures; in a government building no less. Government must stand for HONESTY, JUSTICE, INTEGRITY; not as a place to store garbage.

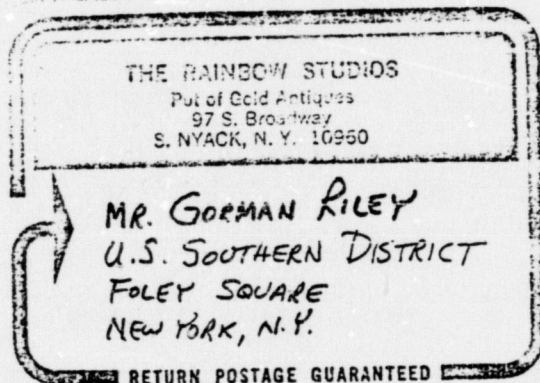
The mural will be done before this year is out.

cc: hundreds
of other people

Seasons Greetings,

Herbert Fass
Herbert Fass

STAINED GLASS WORKS AND SUPPLIES
ANTIQUES IN STAINED GLASS BOUGHT AND SOLD
REPAIRS & SUPPLIES—RECONSTRUCTIONS & ORIGINAL WORKS OF ART



U.S. Southern

09601 A. N. 7000 N. S.
97 S. Broadway
NYACK RESEARCH FOUNDATION
..another project sponsored by..
/ "ELIMINATE THE ENVELOPE"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-v- :

75 Cr. 156

HERBERT I. FASS, :

Defendant. :

-----X

REQUEST TO CHARGE

In considering the guilt or innocence of the defendant on the two counts of the information, you should consider all of the evidence presented during the trial, including the evidence presented by the defendant as to his earlier unsuccessful efforts to have the mural removed by the Government.

If you find that the defendant was justified in doing the acts of June 5, 1974, and December 24, 1974, you must find him not guilty.

United States v. Snider, 502 F.2d 645, 657 (4th Cir. 1974).

COPY RECEIVED
NOV 21 1975
THOMAS J. CAHILL
U. S. ATTORNEY
SO. DIST. OF N. Y.